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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,749	07/17/2003	W. John Gardenier	1442.033B	1803
7590	09/14/2004		EXAMINER	
John Pietrangelo Heslin Rothenberg Farley & Mesiti P.C. 5 Columbia Circle Albany, NY 12203				PHILLIPS, CHARLES E
		ART UNIT	PAPER NUMBER	3751

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/621,749	GARDENIER ET AL.
	Examiner Charles E. Phillips	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 June 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-30 and 43-51 is/are pending in the application.
- 4a) Of the above claim(s) 49-51 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-30 and 43-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                             |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                        | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 23, 24, 26, 29, and 43-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Kvalvik.

See the headrest 30 containing a speaker with sound system and speaker grille 38 which in Fig. 5 is disclosed for use in a spa. The headrest as shown in Fig. 2 does not “substantially alter the substantially uniform elevation of the housing” in that the depiction of 30 Fig. 1 is not substantial.

Re: claim 24, the grille provides a plurality of perforations.

The claim 29 sound wave guide is the speaker wires or the ambient air.

Re: claims 43-44 the headrest 30 is mounted “directly” to the housing of the spa in Fig. 5.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22, 25, 27, 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kvalvik.

To provide for the sound source in Kvalvik to be remote from the headrest would have constituted an obvious expedient of choice in design as would the use of a plurality of sets of perforations of claim 25, the use of commonly known materials of claim 27 and the type and number of speakers of claims 30 and 28.

Claims 21-30 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of Kvalvik.

Diamond teaches a spa 10 with a collar 30 defining an "upper rim of substantially uniform elevation" as seen in Fig. 1. The headrest is seen as 60 "mounted on or below the upper rim". A speaker is shown at 40 but is not located in the headrest.

It would have been obvious to provide for the location of the speaker to be in the headrest as taught by Kvalvik at 38 and 40.

Re: claim 22 the sound source would appear to be in the housing of Diamond as depicted by Fig. 2.

The claim 24 and 25 substance is taught at 38 and 39 of Diamond.

Claim 26 is met by the term pillow of col. 2 line 66. To employ the commonly known materials of claim 27 would have constituted an obvious expedient of design.

Claims 49-51 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/28/04.

Fig. 9 provides no support for light-transferring inserts or jets.

Any inquiry concerning this communication should be directed to Charles E. Phillips at telephone number 308-1515.



Charles E. Phillips  
Primary Examiner